



Qwest
1801 California Street, 22nd Floor
Denver, Colorado 80202
Office: 303-965-8006
Cell: 720-205-0713

Diana DeCorte
Director of Legal Issues
Regulatory Compliance

January 7, 2005

DOCKET FILE COPY ORIGINAL

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

RECEIVED

JAN - 7 2005

Federal Communications Commission
Office of Secretary

RE: Notification of Subscriber Transfer
CC Docket No. 00-257

Dear Ms. Dortch:

Pursuant to Section 64.1120(e) of the Commission's Rules, 47 C.F.R. § 64.1120(e), this letter provides notification of the transfer of certain Colorado local exchange subscribers of Alticomm, Inc. c/o ServiSense.com, Inc. to Qwest Corporation and Qwest Long Distance Corporation, collectively known as Qwest.

The Colorado Public Utilities Commission concurred in its correspondence dated December 6, 2004 to Qwest Corporation that Alticomm abandoned service in the Colorado market. Qwest is providing advance notice that it will become the new provider of certain Colorado local, interLATA, and intraLATA telecommunications services to Alticomm, Inc. c/o ServiSense.com, Inc. customers unless they select another provider. The notice letter is being sent to Alticomm, Inc. c/o ServiSense.com, Inc. customers on January 7, 2005, with the actual transition of customers to take place no sooner than 30 days from the date of the letter. The transfer of customers is expected to occur between February 14, 2005 and March 16, 2005.

A sample of the notification letter is attached hereto. Qwest certifies that it is providing advance subscriber notice in accordance with Section 64.1120(e)(3), 47 C.F.R. § 64.1120(e)(3), and that it will comply with the obligations specified in that notice and other statutory and Commission requirements that apply to the streamlined carrier change process.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Diana DeCorte
Diana DeCorte *ST*

Attachments

No. of Copies rec'd 0
List ABCDE

QWEST CHOICE™ LONG DISTANCE

5 cents a minute plus low \$2.99 monthly fees*—\$20 per month max.
unlimited calling plan
(expires 4/9/05)

*2 MRC per line and \$0.99 interstate services fee per account. Fees apply toward the \$20 monthly max.

Qwest Choice™ Long Distance: Offer expires 4/9/05. Available only to Qwest local service customers for residential use. Not available in MT or AK. \$2 MRC per line and \$0.99 interstate services fee per account are included in domestic LD charges cap. \$5 PIC Change Charge not included. Originating calls available in AK with Qwest calling card. Certain use restrictions apply except in CO. Long Distance service provided by Qwest LD Corp. Listed rates cover calls only within the US and to Puerto Rico, Guam, USVI and CNMI and does not include taxes, incremental charges and surcharges. International rates are excluded. Subject to applicable tariffs and regulations. Rates subject to change.

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Colorado Consumer A La Carte Services Pricing

• Main Residential Line	Monthly: \$14.88 / Installation: \$35.00
• Additional Residential Line	Monthly: \$14.88 / Installation: \$35.00
• 3-Way Calling	Monthly: \$3.50 / Installation: \$8.50
• Additional Listing	Monthly: \$1.50 / Installation: \$8.50
• Call Forwarding	Monthly: \$5.00 / Installation: \$8.50
• Call Rejection	Monthly: \$4.50 / Installation: \$8.50
• Call Waiting	Monthly: \$5.50 / Installation: \$8.50
• Call Waiting ID	Monthly: \$5.50 / Installation: \$8.50
• Caller ID	Monthly: \$6.95 / Installation: \$8.50
• Continuous Redial	Monthly: \$3.50 / Installation: \$8.50
• Custom Ringing	Monthly: \$5.00 / Installation: \$7.00
• Do Not Disturb	Monthly: \$3.95 / Installation: \$8.50
• Last Call Return	Monthly: \$2.95 / Installation: \$8.50
• Security Screen	Monthly: \$2.95 / Installation: \$8.50
• Voice Mail	Monthly: \$7.95 / Installation: \$8.50

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Gregory E. Sopkin, Chairman
Polly Page, Commissioner
Carl Miller, Commissioner
Bruce N. Smith, Director

Department of Regulatory Agencies

Tambor Williams
Executive Director



December 6, 2004

Bill Owens
Governor

Paul R. McDaniel
Qwest Corporation
Assistant Vice President
Colorado Regulatory Affairs
1005 17th Street, Suite 200
Denver, CO 80202

RE: Alticomm, Inc. c/o Servisense.com, Inc., Notice of Discontinuance

Dear Mr. McDaniel,

We are in receipt of your letter dated October 14, 2004, notifying the Commission of Qwest wholesale's notice of disconnection to Alticomm, Inc. c/o Servisense.com, Inc. ("Alticomm") according to the interconnection agreement between the parties.

This letter confirms that the Commission has not received any communication from Alticomm since your letter. Alticomm had, however, previously been in contact with Commission Staff regarding its bankruptcy filing. Alticomm indicated to Staff that it was leaving the Colorado market as of August 16, 2004, and that it might not be filing an application to exit the Colorado market as required by the Commission's rules. Alticomm did, however, represent to Staff that it would be notifying its 278 Colorado customers of the need to choose an alternative provider.

Based on Staff's communication with Alticomm on this matter and the lack of response to the Qwest disconnection letter, Staff believes it is a reasonable conclusion that Alticomm has effectively abandoned service in the Colorado market. Therefore, and since Alticomm was a reseller of Qwest service, Qwest should proceed under the Commission's Rule 4 CCR 723-40-40.2 regarding abandonment by a reseller.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Trogonoski".

John Trogonoski
Financial Analyst

cc: Jerry Enright

1580 Logan Street, Office Level 2, Denver, Colorado 80203, 303-894-2000

www.dora.state.co.us/puc
Permit and Insurance (Outside Denver) 1-800-888-0170
TTY Users 711 (Relay Colorado)
Consumer Affairs 303-894-2070

Consumer Affairs (Outside Denver) 1-800-456-0858
Hearing Info 303-894-2025
Transportation Fax 303-894-2071
Fax 303-894-2065

Residential Package and Long Distance Pricing

QWEST CHOICE™ HOME \$25.99 A MONTH (plus taxes and fees) (Price increases to \$29.99 a month for all customers beginning February 7, 2005)

Customized package
One low, monthly price
Unlimited local calls

Choose three features
Add or change features anytime

Streamlined billing
One plan

Pick what you want from a list of our most popular features and enjoy the flexibility to change them at no additional cost.

Caller ID with Qwest® Security
Screen™
Call Waiting
Voice Mail
Line-Backer™

Six free Qwest 411™ Directory
Assistance calls
3-Way Calling
Call Rejection

Call Forwarding
Last Call Return
Custom Ringing

Qwest Choice™ Home: For Qwest CO, IA, ID, MN, ND, OR, SD, WA and WY residential local service customers only. Not available in N. Idaho. Price increases to \$29.99 for all customers on 2/7/05. Choice of 3 features. Prices/package components subject to change. Listed rates do not include taxes, incremental charges and surcharges. Feature limitations exist, including but not limited to Directory Assistance, Caller ID with Qwest® Security Screen™, Line-Backer™, and Last Call Return. Ask your Qwest Representative for details. Some features not compatible with others, require special equipment at an additional charge, and may not be available in all areas. Subject to applicable tariffs and regulations. Rates subject to change. In Colorado, this product is tariffed as Qwest Choice™ Home Pick 3.

QWEST CHOICE™ HOME PLUS \$32.99 A MONTH (plus taxes and fees) (Price increases to \$34.99 a month for all customers beginning February 7, 2005)

**Choose all the features you want.
Don't limit yourself to just a few calling features—
choose as many as you want with new Qwest Choice™ Home Plus.**

Customized package
One low, monthly price

Unlimited local calls
Choose any or all features

Add or change features anytime
Streamlined billing

**Pick any or all of the options you want from a list of our most popular features
and enjoy the flexibility to change them at any time, at no additional cost.**

Caller ID with Qwest® Security
Screen™
Call Waiting
Voice Mail
Line-Backer™

Six free Qwest 411™ Directory
Assistance calls
3-Way Calling
Call Rejection

Call Forwarding
Last Call Return (*69)
Custom Ringing

Qwest Choice™ Home Plus: For Qwest CO, IA, ID, MN, ND, OR, SD, WA and WY residential local service customers only. Not available in N. Idaho. Price increases to \$34.99 for all customers on 2/7/05. Line-Backer™, Directory Assistance (DA), 3-Way Calling, and Last Call Return automatically included. Other features available for selection. Prices/package components subject to change. Listed rates do not include taxes, incremental charges and surcharges. Feature limitations exist, including but not limited to Directory Assistance, Caller ID with Qwest® Security Screen™, Line-Backer™, and Last Call Return. Ask your Qwest Representative for details. Some features not compatible with others, require special equipment at an additional charge, and may not be available in all areas. Subject to applicable tariffs and regulations. Rates subject to change.

ALTICOMM/SERVISENSE WILL STOP PROVIDING LOCAL AND LONG-DISTANCE TELEPHONE SERVICE IN COLORADO

January 7, 2005

Dear Alticomm/ServiSense Customer:

Although your telephone service is currently working, Alticomm/ServiSense has stopped providing local and long-distance telephone service in Colorado. The Colorado Public Utilities Commission's ("PUC's") rules require Qwest, as the underlying service provider to Alticomm/ServiSense, to inform you of your options for keeping local and long-distance telephone service. To maintain your telephone service, the following two options are available to you:

1. Before February 14, 2005, you can sign up with another telephone company of your choice (see attached list of other telephone companies prepared by the PUC and the Office of Consumer Counsel) and keep your current telephone number and features, as feasible; or,
2. If you do not choose another provider, subject to the exception noted below, your service will be transferred automatically to Qwest, the owner of the facilities providing your service. You will keep your telephone number. You will also maintain your current telephone services, as feasible. The transfer will occur between February 14, 2005 and March 16, 2005. You will not be charged to transfer your service.

If you are currently a customer of a long-distance company other than Alticomm/ServiSense, your long-distance provider will remain unchanged unless and until you request a change. Even if you are transferred to Qwest, you may at any time choose another provider. If you had requested Alticomm/ServiSense for a preferred carrier freeze on your local and/or long-distance services, those freezes have been lifted in the transfer process. If you are transferred to Qwest, please contact Qwest at the number below if you would like to institute a new freeze on any of your new service providers, otherwise please contact your new local service provider.

If you do not choose an alternative provider and you are transferred to Qwest service, there will be no charge to you, and you will maintain your same telephone number and, to the extent possible, the same services and features that you have now, except they will be provided under Qwest's terms and conditions and Qwest's rates. A copy of Qwest's price list is enclosed with this letter. Once your service has been transferred, you will receive a Welcome Letter from Qwest, informing you of your new services and features. If you have any questions about the services or features identified in your Welcome Letter, please call Qwest at the toll-free number listed below.

Depending on your credit history, Qwest may charge you a deposit. **Please note:** if you owe Qwest a previous bill for local telephone service, before Qwest will transfer your account, you must either pay Qwest what is owed, make acceptable payment arrangements, or choose another provider to ensure your service is continued without disruption.

You may call Qwest at 800-244-1111 to discuss a previous Qwest residential bill, choose another long-distance carrier, or for any other questions you might have including questions about Qwest's rates, terms and conditions for service. For a previous Qwest business bill, or to choose another business long-distance carrier, or for any other business service questions you might have, you may call Qwest at 800-603-6000.

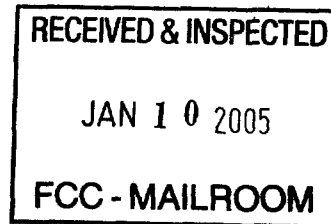
Please be assured that your transfer to Qwest service in no way prevents you from choosing a different local service provider at any time. If you have any questions or complaints regarding your service with Alticom/ServSense, please either call the company directly, or the Colorado Public Utilities Commission at 303-894-2070 or if outside of the Denver metro area at 1-800-456-0858.

Qwest.

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type form with few spaces to be completed by the applicant. The form itself is actually identical to all other Forms 470 at issue in this appeal as well as the Forms 470 connected with other Commitment Adjustment Letters. With respect to the technology plans, ICM has compared the technology plan at issue with other technology plans being questioned and again, while the plans are similar, they all appear to be based upon information and sample technology plans that are available on the E-Rate Central website. ICM had no knowledge concerning the preparation of the technology plan at issue and it appears that the entity very likely accessed the E-Rate Central website and utilized the website as a basis for the preparation of its technology plan, as apparently other applicants did, thereby yielding technology plans that are similar.

- After a thorough review of the appeal and all relevant documentation, it has been determined that the documentation you submitted to SLD during the course of the Item 25 Selective Review process indicates that similarities in the Form 470: 756960000401729 and technology plan exist. During the course of the appeal review, it was determined that the applicant's form identifier is the Form 470 number, standard services are sought for each service category, service or function and quantity and or capacity is written in all capital letters. Upon review of the Item 25 documentation that was submitted, it was determined that identical language exists for all six competitive bidding questions, the template fax back has identical wording in what appears to be the same handwriting, and the template technology plan has identical wording and format. Based on this documentation, it was determined that similarities exist within the Form 470 and technology plan which indicate that the original vendor, Diversified Computer Solutions, Inc., was improperly involved in the competitive bidding process. Consequently, the appeal is denied in full.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.



INDEPENDENT COMPUTER MAINTENANCE LLC

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www.icmcorporation.com

FAX COVER SHEET

FAX NUMBER: (202) 418-0187

TO: Federal Communications Commission
Office of the Secretary

FROM: Anthony Natoli, President
Independent Computer Maintenance, LLC

DATE: January 7, 2005

RE: Letter of Appeal – Kearny Christian Academy

NUMBER OF PAGES INCLUDING COVER: 64 pages to follow

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JAN 10 2005

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Please contact our office immediately at
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Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

November 16, 2004

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East, Suite C-102
Clifton, NJ 07013

Re: Kearny Christian Academy

Re: Billed Entity Number: 227328
471 Application Number: 307730
Funding Request Number(s): 779828, 799843, 779903
Your Correspondence Dated: May 12, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Commitment Adjustment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 779828, 799843, 779903
Decision on Appeal: Denied in full
Explanation:

- You state that the determinations made by USAC for the above funding requests were founded on assumptions which had no basis in fact and were made in the absence of sufficient information. You state that Independent Computer Maintenance, LLC (ICM) had no contact with the applicant, Kearny Christian Academy at the time the Form 470 and technology plan were filed on or about December 15, 2001. ICM became involved with this funding request on July 24, 2003 when, pursuant to a SPIN change request from the applicant, ICM was named the proposed new service provider replacing the previous provider, Diversified Computer Solutions, Inc. A copy of the applicant's request for a SPIN change and approval is included with the appeal. ICM had no input with the Form 470 that was filed or the technology plan preparation. ICM has obtained a copy of the Form 470 and has compared the Form 470 and technology plan at issue and after a review of the documentation it seems that they are a standard



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Clifton, NJ 07013

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January 7, 2005

By Fax: 202-418-0187

and Federal Express

Letter of Appeal
Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Washington, DC 20554

REQUEST FOR REVIEW

Re: **APPEAL OF (1) COMMITMENT ADJUSTMENT LETTER
AND (2) SUBSEQUENT DENIAL OF SAID APPEAL BY
THE SCHOOLS AND LIBRARIES DIVISION OF THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
CC DOCKET NO.: 02-6
FUNDING YEAR: 2002 Through 2003
FORM 471 APPLICATION NUMBER: 307730
APPLICANT NAME: Kearny Christian Academy
APPLICANT CONTACT: David Manzo
BILLED ENTITY NAME: Kearny Christian Academy
BILLED ENTITY NUMBER: 227328
BILLED ENTITY AND APPLICANT
CONTACT PHONE NO. (201) 998-9460
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: 973-916-1800
SERVICE PROVIDER FAX NO.: 973-916-1986
SERVICE PROVIDER E-MAIL:
TONYN@ICM CORPORATION.COM**

**Enclosure 1: Copy of Administrator's Decision on Appeal -
Funding Year 2002-2003 for Kearny Christian
Academy dated November 16, 2004.**

**Enclosure 2: Copy of Independent Computer Maintenance, LLC
Appeal of Commitment Adjustment -
Funding Year 2002-2003 for Kearny Christian
Academy dated May 12, 2004.**

Enclosure 3: Copy of FCC Decision entitled "In Re

Since 1985

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ENCLOSURE 1

Letter of Appeal
Federal Communications Commission
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**Federal-State Joint Board of Universal Service,
et al.," adopted on July 23, 2004.**

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") Administrator's Decision on Appeal - Funding Year 2002-2003, dated November 16, 2004. Said decision denied in full ICM's appeal of USAC's Commitment Adjustment Letter dated March 16, 2004, which letter rescinded in full the Funding Request Numbers ("FRNs") set forth below. A copy of USAC's Administrator's Decision on Appeal - Funding Year 2002-2003 dated November 16, 2004, is annexed hereto as Enclosure 1. A copy of ICM's Appeal to the USAC, and its enclosures, is annexed hereto as Enclosure 2.

FACTS

By a Commitment Adjustment Letter dated March 16, 2004, USAC advised ICM that, under the above-referenced Form Application Number, the commitment amount for the following FRN's are "rescinded in full" and requested the recovery of the funds to the extent indicated below:

<u>Funding Request Number ("FRN")</u>	<u>Requested Recovery</u>
779828	\$ 35,775.00
799843	\$ 11,448.00
779903	\$ - 0 -

The USAC's March 16, 2004 Commitment Adjustment decision was justified by USAC because:

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firm of Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, NY 11570, telephone
No. 516-764-2800, fax No. 516-764-2827, e-mail gmarcus@goldbergconnolly.com.

Very truly yours,

INDEPENDENT COMPUTER MAINTENANCE, LLC

By: 

Anthony Natoli, President

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"SLD found similarities in Forms 470 and Technology Plans among the applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result, the commitment amount is rescinded in full." (Emphasis added) (A copy of the March 16, 2004 Commitment Adjustment Letter is annexed as Enclosure A of Enclosure 2.)

On May 12, 2004, ICM submitted its Letter of Appeal with respect to the aforesaid Commitment Adjustment Letter citing a number of reasons why the proposed Commitment Adjustment was improper and wrong, including the fact that ICM had no contact with the applicant, Kearny Christian Academy, during the period the Form 470 and Technology Plan in question was prepared or filed. By letter dated November 16, 2004, the USAC issued an Administrator's Decision of Appeal - Funding Year 2002-2003, denying in full ICM's appeal.

The Administrator's Decision of Appeal - Funding Year 2002-2003 cites the following reasons for its rejection of ICM's appeal:

"It has been determined that the applicant documentation that was submitted to SLD during the course of the Item 25 Selective Review process indicates that similarities in the Form 470: 756960000401729 and technology plan exist. During the course of the appeal review, it was determined that the applicants' form identifier is the Form 470 number, standard services are sought for each service category, service or function and quantity and/or capacity is written in all capital letters. Upon review of the Item 25 documentation that was submitted, it was determined that identical language exists for all six competitive questions, the template fax back has identical wording in what appears to be the same handwriting, and the template technology plan has identical wording and format. Based upon this documentation, it was determined that similarities exist within the Form 470 and technology plan which indicate that the original vendor, Diversified Computer Solutions, Inc., was improperly involved in the competitive bidding process. Consequently, the appeal is denied in full." (Emphasis added)

While ICM was apparently successful in dispelling the reason USAC originally rescinded in full the FRNs, to wit, that ICM "was improperly involved in the competition bidding process," the Administrator only modified the original finding to find that there was an indication that the

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Finally, with respect to the applicability of the decision to other cases, the FCC stated that:

"[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency." *Id.* at par. 10.

Applying this language and this directive of the FCC to the case at hand and the Commitment Adjustment Letter, and the Administrator's Decision on Appeal dated November 16, 2004, it is clear that ICM had absolutely nothing to do with the original application process and, as such, it is merely a provider that needs to uphold the provider's obligations as delineated above by the FCC. It is the Kearny Christian Academy who was the applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application process and, as such, it is that School to whom the Schools and Library Division must look to first to recover any funding that may have been granted in violation of any statute, regulation or rule. Based upon this decision, the FCC has conclusively decided the issue presented in this appeal and has held that the USAC should proceed against the wrongdoing applicant to recover any questionable payments and not the innocent provider.

CONCLUSION

For the reasons set forth above, ICM hereby requests that the relief requested in this appeal be granted and the finding as contained in Universal Service Administrative Company's letter of March 16, 2004 be reversed and that all commitment amounts be reinstated in full.

As noted in ICM's earlier appeal, most of the efforts ICM has expended under the aforesaid FRNs were labor hours, internet and telephone charges, cabling and other non-recoverable items, therefore, the rescission of the FRNs would be a disastrous and an unusually severe hardship on this small business that would effectively terminate ICM's ability to continue as a viable entity. If these commitment adjustments are allowed to remain, not only would the management of ICM lose their investment, 15 employees would lose their jobs and a large number of local businesses that rely on ICM could also be adversely affected. This would occur all because of some very serious deficient findings of fact, unsubstantiated conclusions, and disregard of the applicable law. Both the law and the equity of this situation require this Commission to uphold this appeal and reinstate all the commitments at issue in full.

If you have any further questions concerning this matter, please contact the undersigned at the address and telephone number indicated above, or our attorney, Gary Marcus, of the law

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prior vendor, not ICM, was "improperly involved in the competitive bidding process" and rejected ICM's appeal on that basis.

Notwithstanding the fact that ICM was apparently successful in convincing the Administrator that the critical fact USAC based its prior decision on was wrong and ICM was not improperly involved in the competitive bidding process, the damage to ICM of rescinding in full the FRNs remained intact. This determination by the Administrator must be reversed because 1) it was clearly arbitrary and capricious 2) it fails any test of adequate due process, 3) it was decided based upon assumption, consequential evidence and conjecture, and 4) it is not supported by any factual determinations as well as the fact that it violates the holding and directive of the FCC contained in *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252, adopted by the FCC on July 23, 2004. [hereinafter *In re Federal-State*]. On November 23, 2004, ICM requested the SLD to reconsider its decision based upon *In re Federal-State* holding.

ARGUMENTS

1. These determinations by the Universal Services Administrative Company ("USAC") were founded upon assumptions which had no basis in fact and were made in the absence of sufficient information. Since the bases of USAC's were founded on mere assumption, consequential evidence, and conjecture, the Administrator's Decision was arbitrary and capricious. In particular these determinations were wrong for the following reasons:

A. As stated in ICM's appeal of the Commitment Adjustment Letter dated May 12, 2004, ICM had obtained from the USAC website a copy of the Form 470 or had requested and received from Kearny Christian Academy, a copy of the Form 470 and technology plan that are at issue in this appeal. In addition, ICM had requested and received other Forms 470 and technical plans associated with other Form 471 Application Numbers being questioned by other Commitment Adjustment Letters. ICM compared the Form 470 and technology plan at issue in this appeal with other Form 470 and technology plans which are the subject matter of other Commitment Adjustment Letters received by ICM. A review of these Forms 470 indicated that the Form 470 is a standard form with a few spaces to be completed by the applicant. The form itself is obviously identical to all other Forms 470 and a detailed analysis of the applicant completed sections of the Form 470 at issue in this appeal verses the Forms 470 at issue in the other Commitment Adjustment Letters indicates that the Forms, while being similar, are certainly not identical in all respects. Furthermore, in all likelihood comparing these Forms 470 to any other Forms 470 would yield similar results.

With respect to the technology plans, ICM compared the technology plan at issue in this appeal with the other technology plans being questioned by other Commitment

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The FCC further stated with respect to the "party or parties who have committed the statutory or rule violation" that:

"We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." *In re Federal-State*, 19 FCC Rcd at par. 10.

In reaching this conclusion, the FCC noted that:

The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in Sections 54.504 and 54.511(a) of our rules and related orders. The school or the library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

Id. at par. 11.

It further went on to discuss that the service providers also have to follow the rules and regulations, but those are with regard to

the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider. (Emphasis added)

Id. at par. 11.

To make matters worse, this proceeding, in its essence, is an attempt to recover funds from ICM and, therefore, is an attempt to enforce a forfeiture of ICM's property. If any civil proceeding deserves the procedural safeguards of Due Process, it is a forfeiture proceeding. This Commission cannot expect a small business like ICM, which is being faced with financial ruin if it cannot reverse these commitment adjustments, to adequately defend its position when the USAC, on deciding its appeal, considers new evidence that ICM had no notice of or for that matter had any knowledge of whatsoever. Based upon this total lack of both substantive and procedural due process, this Commission must grant this Appeal, rescind the Commitment Adjustment Letter, and reinstate all commitment amounts in full.

C. The proposed commitment adjustments should be reversed on equitable grounds. ICM, which by the USAC's own admission, had nothing to do with any alleged improprieties in the competitive bidding process is being asked to bear the brunt of some other entity's alleged improper acts. If these proposed commitment adjustments remain as proposed, ICM will have rendered non-recoverable goods and services and have effectively received no compensation for its efforts which it rendered in accordance with its contractual commitments. On the other hand, an applicant who may have been a party to an improper competitive bidding procedure will have received goods and services and have incurred no costs for their acquisition. This would be a gross injustice where an innocent party is punished and a culpable party receives an undeserved benefit. This Commission has, in the past, reviewed the equities of various matters and when, as in this case, these equities weighed heavily in favor of an aggrieved party, this Commission waived the technical requirements of regulations to achieve a just outcome. *In re Shawnee Library System*, 17 FCC Rcd 11824, 11829 on January 25, 2002; *In re Folsom Cordova United School District*, 16 FCC Rcd 20215, 20220 on November 13, 2001. In order to avoid an unwarranted hardship to ICM and to achieve a just result, the Commission should issue a waiver with respect to the FRNs in issue and the competitive bid rules. On the equity considerations alone, the commitment adjustment results should be cancelled and all FRNs reinstated in full.

2. Subsequent to the filing of ICM's Appeal on May 12, 2004, but prior to the Administrator's Decision on Appeal issued on November 16, 2004, the Federal Communication Commission ("FCC") adopted *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252 on July 23, 2004 [hereinafter *In re Federal-State*]. A copy of that decision is annexed hereto as Enclosure 3.

This decision, issued by the FCC in response to petitions by various providers, directed the USAC to re-direct its efforts to recover any funds that had been allegedly distributed unlawfully from the providers to the party or parties who have committed the statutory or rule violation in question.